

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LOUIS J. VELA,

No. C 08-1575

Plaintiff,

v.

**ORDER DENYING MOTIONS FOR
SUMMARY JUDGMENT WITHOUT
PREJUDICE; AFFORDING PLAINTIFF
OPPORTUNITY TO CONDUCT
DISCOVERY; DIRECTIONS TO PARTIES**

AT&T UMBRELLA BENEFIT PLAN NO. 1,

Defendant

Before the Court are (1) plaintiff Louis J. Vela's motion for summary judgment, filed February 24, 2009 and (2) defendant AT&T Umbrella Benefit Plan's cross-motion for summary judgment, filed March 20, 2009, each brought pursuant to Rule 56 of the Federal Rules of Civil Procedure. Also before the Court are the parties' supplemental briefings on the issues raised by the Court as to (1) whether the term "Benefits Payable" under plaintiff's Disability Income Plan ("DIP") refers to plaintiff's gross or net benefits, (2) whether any estoppel exists based on statements made by defendant to plaintiff's wife, and (3) the appropriate remedy if liability is established. Having considered the parties' respective submissions, the Court, as discussed below, will deny both motions without prejudice.

In the course of the supplemental briefing, defendant sought to offer a declaration by Tonya Warner ("Warner") for the purpose of showing the claims administrator has consistently interpreted the phrase "Benefits Payable" in the subject DIP to refer to gross

1 benefits. (See Warner Decl. at ¶¶ 7-12.) Plaintiff objects to the Court's consideration of the
2 Declaration on the grounds that it constitutes evidence outside the administrative record
3 and because discovery has closed.¹

4 The scope of the evidence a district court may consider in reviewing a decision to
5 deny a claim under ERISA depends on whether the standard of review is abuse of
6 discretion or de novo. See Abatie v. Alta Health & Life Ins. Co., 458 F.3d 955, 970 (9th Cir.
7 2006). In the instant case, the parties dispute the proper standard under which the
8 decision at issue should be reviewed, and further, if the standard is deemed to be abuse of
9 discretion, the degree of skepticism with which the Court should review said decision. (See
10 Pl.'s MSJ Reply at 2:17-21; see also Def.'s MSJ Reply at 7:5-10.)

11 Under either standard of review, however, the Court finds, on the record before it,
12 the Declaration is relevant and admissible. See McDaniel v. Chevron Corp., 203 F.3d
13 1099, 1113 (9th Cir. 2000) (holding "consistent pattern of interpretation is significant
14 evidence" as to reasonableness of plan interpretation) (internal quotation and citation
15 omitted); Abatie, 458 F.3d at 968-70 (holding, under abuse of discretion standard, a "district
16 court may . . . consider evidence outside the administrative record to decide the nature,
17 extent, and effect on the decision-making process of any conflict of interest"; in determining
18 Court's degree of skepticism "[a] Court may weigh a conflict more heavily if . . . the
19 administrator provides inconsistent reasons for denial . . . or has repeatedly denied benefits
20 to deserving participants by interpreting plan terms incorrectly"); Jebian v. Hewlett Packard,
21 349 F.3d 1098, 1110 (9th Cir. 2002) (holding, under de novo review, trial court may admit
22 additional evidence, beyond the record before the claims administrator, to "enable the full
23 exercise of informed and independent judgment").

24 Nonetheless, as plaintiff points out, the documents on which Warner relies have not
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26 ¹ To the extent plaintiff may be arguing the Declaration is untimely, the Court finds to
27 the contrary. The Declaration was submitted solely in connection with the first of the
28 above-referenced three issues on which supplemental briefing was allowed, which issue
was not raised until the Court asked the parties to address it at the Case Management
Conference held on December 18, 2009.

1 been submitted in connection with the Declaration and plaintiff has not had an opportunity
2 to conduct discovery with respect to any such additional evidence. Under the
3 circumstances, the Court will deny both motions for summary judgment without prejudice
4 and will afford plaintiff the opportunity to seek discovery with respect to defendant's newly
5 proffered evidence.


6 Accordingly, for the reasons stated above:

7 1. The parties' pending motions for summary judgment are hereby DENIED
8 without prejudice.

9 2. Plaintiff may conduct limited discovery relevant to defendant's additional
10 evidence; upon completion of such discovery, the parties shall renote their motions for
11 summary judgment, and, if appropriate, submit in connection therewith a stipulated
12 schedule for additional supplemental briefing.

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14 **IT IS SO ORDERED.**

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16 Dated: April 1, 2010

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18 MAXINE M. CHESNEY
19 United States District Judge
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